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Supreme Court of the United States

OCTOBER TERM, 1953

PHILLIPS PETROLEUM COMPANY, *Petitioner,*

v.

STATE OF WISCONSIN, ET AL., *Respondents.*

STATE OF TEXAS, ET AL., *Petitioners,*

v.

STATE OF WISCONSIN, ET AL., *Respondents.*

On Petitions for Rehearing on Petitions for Writs of Certiorari to the Court of Appeals for the District of Columbia Circuit

BRIEF AMICI CURIAE OF STATES OF LOUISIANA, COLORADO, MISSISSIPPI, NORTH DAKOTA, WYOMING, AND THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS.

FRED S. LE BLANC
Attorney General of Louisiana
State Capitol Building
Baton Rouge, Louisiana

DUKE W. DUNBAR
Attorney General of Colorado
State Capitol Building
Denver, Colorado

WILBUR ROCCHIO
Assistant Attorney General of Colorado
311 Midland Building
Denver, Colorado

J. P. COLEMAN
Attorney General of Mississippi
State Capitol Building
Jackson, Mississippi

E. T. CHRISTIANSON
Attorney General of North Dakota
State Capitol Building
Bismarck, North Dakota

HOWARD BLACK
Attorney General of Wyoming
State Capitol Building
Cheyenne, Wyoming

JAY KYLE
General Counsel
State Corporation Commission of the State of Kansas
New England Building
Topeka, Kansas

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The states of Louisiana, Colorado, Mississippi, North Dakota and Wyoming by their respective Attorney Generals and the State Corporation Commission of the State of Kansas, the body charged with the responsibility of

administering the Oil and Gas Conservation laws of said state, by its General Counsel, file this Brief Amici Curiae pursuant to Rule 27 of this Court, and urge the Court to grant the Petitions for Rehearing filed by the respective petitioners, and upon rehearing to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia.

Each of the states so named is vitally interested in the question presented by this proceeding, i.e., whether independent producers and gatherers may be regulated as natural gas companies under the provisions of the Natural Gas Act. Although the facts now before this Court relate only to the sales of Phillips Petroleum Company, the activities of Phillips involved in this proceeding do not differ substantially from those of hundreds of other independent producers and gatherers of gas who operate in these states. For that reason, this proceeding has been generally regarded as a test case wherein the jurisdiction of the Commission over independent producers and gatherers would be determined.

Each of said states has enacted legislation providing for the conservation of oil and gas and has established administrative agencies authorized to carry out and enforce these laws, with the ultimate purpose being to bring about the greatest conservation of oil and gas for the benefit of the public as a whole. In each of these states, gas is one of the important natural resources of the state and is an appreciable source of revenue to the state and its citizens.

The decision of the majority of the Court of Appeals may require the Federal Power Commission to regulate all sales for resale in interstate commerce and, if so, will increase the number of companies and individuals subject to its jurisdiction from 140 to more than 2,400, approximately 1700 per cent. An entire segment of the industry not heretofore regulated or deemed by the Commission subject to its authority may be subjected to federal regulation. No such drastic change in statutory law should be brought

about by the edict of one Court of Appeals, particularly where, as here, the judges are pointedly divided in their views. Only by the mandate of this Court after full hearing and argument should such change in legislative policy be allowed to take place.

It may be assumed that this Court may review the order at a later stage of the proceedings, but the delay of the several years that will intervene will seriously affect the economy of the producing states, and will interfere with their efforts to prevent physical waste of oil and gas.

The seriousness of the impact upon state regulation of production and gathering of the extension of federal authority to independent producers and gatherers is emphasized by the fact that the Federal Power Commission, *the very agency to which Congress entrusted the administration of the Act*, found that its regulation of independent producers and gatherers "would, by its very nature, be inconsistent or constitute a substantial interference with" state conservation regulations (90 P.U.R. (N.S.) 325, 352). The Court of Appeals did not upset that finding; on the contrary, it treated it as immaterial (205 F. 2d 706, 711, Footnote 11). Thus the effect of the Court of Appeals decision is to require the Federal Power Commission to regulate sales of gas in the field without regard to the effect upon state conservation practices.

There has been for many years a hesitancy on the part of independent producers and gatherers to sell gas to interstate pipe lines for fear that they might thereby be subjected to Federal Power regulation as a natural gas company. The decision of the Court of Appeals has accentuated that fear, and it is probable that producers will in many instances refuse to sell their gas to interstate pipe lines as long as their status under the Natural Gas Act remains in doubt. Such gas may be sold to cheaper markets in the state in which produced, may be held in the ground, or blown into the air where legally permissible. Producers will thereby be deprived of substantial revenue, the states

will be deprived of substantial tax revenue and their efforts to conserve their natural resources will be impeded, and interstate consumers will be deprived of adequate supplies of gas. The economy of the entire nation will suffer.

In view of the fact that the decision of the Court of Appeals "is fundamental to the further conduct of the case" it should be reviewed now. *United States* v. *General Motors Corp.*, 323 U.S. 373, 377; *Land* v. *Dollar*, 330 U.S. 730, 734, footnote 2; *Larson* v. *Domestic and Foreign Corp.*, 337 U.S. 682, 685, footnote 3. The record has been fully developed, and a long drawn out rate hearing, involving as it will the formulation of new policies and procedures with respect to a new type of regulation, can add nothing in respect to the jurisdiction of the Commission.

The Interstate Compact Commission, in convention assembled, passed a resolution on December 5, 1953, calling attention of its 26 member states to the serious situation confronting the states as the result of the Court of Appeals decision in the Phillips case. See petition for rehearing filed in No. 281, this term, by the States of Texas, Oklahoma, and New Mexico, pages 3-4, where the resolution is quoted in full. This demonstrates the importance of the question presented and the necessity for a decision by this Court.

Respectfully submitted,

FRED S. LE BLANC
Attorney General of
Louisiana
State Capitol Building
Baton Rouge, Louisiana

DUKE W. DUNBAR
Attorney General of Colorado
State Capitol Building
Denver, Colorado

WILBUR ROCCHIO
Assistant Attorney General
of Colorado
311 Midland Building
Denver, Colorado

J. P. COLEMAN
Attorney General of
Mississippi
State Capitol Building
Jackson, Mississippi

E. T. CHRISTIANSON
Attorney General of
North Dakota
State Capitol Building
Bismarck, North Dakota

HOWARD BLACK
Attorney General of
Wyoming
State Capitol Building
Cheyenne, Wyoming

JAY KYLE
General Counsel
State Corporation
Commission of the
State of Kansas
New England Building
Topeka, Kansas

J. PAUL MARSHALL
Union Trust Building
Washington 5, D. C.

Of Counsel.